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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN

NEXTDOOR.COM, INC., a
Delaware corporation,

Plaintiff,

vs.

RAJ ABHYANKER, an
Individual,

Defendant.

Case No. 3:12-cv-05667-EMC

San Francisco, California
Thursday
February 20, 2014
1:30 P.M.

RAJ ABHYANKER, an
Individual,

Counterclaimant,

vs.

NEXTDOOR.COM, INC., a
Delaware corporation;
PRAKASH JANAKIRAMAN, an
individual; BENCHMARK
CAPITAL PARTNERS, L.P., a
Delaware limited liability
company; SANDEEP SOOD, an
individual; MONSOON
ENTERPRISES, INC., a
California corporation,
and DOES 1-50, inclusive;

Counterdefendants.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Reported By: Kelly Lee Polvi, CSR No. 6389, RMR, FCRR

P R O C E E D I N G S

FEBRUARY 21, 2014

1:50 P.M.

THE CLERK: Calling case C-12-5667, Nextdoor
vs. Abhyanker.

If Counsel can please come to the podium and
state your appearances for the record.

MR. PULGRAM: Good afternoon, Your Honor.
Laurence Pulgram for Plaintiff Nextdoor.com and
Plaintiff -- and Counter-Defendant Janakiraman.

THE COURT: All right. Thank you.

MR. RAWLINSON: Matt Rawlinson of Latham
Watkins on behalf of Counter-Defendant Benchmark.

THE COURT: All right. Thank you.

MR. WALIA: Harpreet Walia, appearing on behalf
of Counter-Defendants Sandeep Sood and Monsoon
Enterprises.

THE COURT: All right. Thank you.

MR. TARABICHI: Your Honor, Bruno Tarabichi
appearing on behalf of Defendant and Counter-Defendant
Raj Abhyanker.

THE COURT: All right. Thank you.

Go ahead.

MS. NORTON: Heather Norton appearing an behalf
of Mr. Abhyanker, Defendant and Counter-Claimant.

THE COURT: All right.

1 MR. BALL: Good morning, Your Honor. Eric Ball
2 from Fenwick & West on behalf of Plaintiff Nextdoor.com
3 and Counter-Defendant Prakash Janakiraman.

4 THE COURT: All right.

5 Let me address the motion for summary judgment,
6 Nextdoor's motion for summary judgment, and kind of
7 jump to the core issues about the two trade secrets that
8 have been now identified at this juncture, the first
9 being the identification of the Lorelei neighborhood as
10 an ideal first neighborhood to use to test and launch a
11 neighborhood social network.

12 And I understand Nextdoor's argument that,
13 given the public nature of Mr. Abhyanker's efforts in
14 conducting his surveys and going door to door and
15 transforming the neighborhood, beginning market
16 penetration to sort of build the idea and to popularize
17 it, is done in a public way.

18 While there is, I guess, some suggestion of a
19 confidentiality agreement that may have been used in
20 some context, perhaps a focus group, there's no evidence
21 that this was done on a widespread basis -- for
22 instance, when he went door to door.

23 On the other hand, the fact that people may
24 have known what he was doing and that he's doing a
25 survey, that they were part of this survey or attempted

1 to be the subject of some discussion and marketing of,
2 for instance, a network, did not necessarily indicate
3 that the residents with whom he had contact knew exactly
4 why he was choosing that neighborhood or, in fact, that
5 he was choosing only that neighborhood, unless there's
6 some evidence that says that Mr. Abhyanker went and told
7 everybody, "I am focusing only on this neighborhood as
8 the ideal, you know, test site or prototype for the
9 prototype of this network."

10 So I'm not sure why it's any different than if
11 you use a customer list, which is a trade secret, and
12 you start contacting customers in a public way. You
13 call people up and you contact them and try to market
14 whatever you're trying to market and you don't obtain a
15 confidentiality agreement for each customer that you
16 talk to. That doesn't necessarily disclose the customer
17 list.

18 So I guess that's my question to Nextdoor.

19 I'm having trouble understanding why the sort
20 of secret requirement has been lost by virtue of the
21 actual context of his transformative efforts and
22 marketing efforts.

23 MR. PULGRAM: Thank you, Your Honor.

24 In the case of a customer list, it is that
25 collection of information, that collection of the names

1 of the individuals, that is the secret. And any one
2 individual knowing that they're on that list does not
3 mean that they have the core secret, which is the
4 contents of that list.

5 But in this case the alleged secret is the
6 identification of this neighborhood as a place to
7 prototype. It is not the names of each of the people
8 that were prototyped, it is the identification of that
9 neighborhood.

10 And what Mr. Abhyanker says he did was he came
11 up with a methodology to determine that that would be
12 the neighborhood.

13 That's not identified as a trade secret. That
14 methodology is not something that he has contended that
15 he ever disclosed to Mr. Sood or ever disclosed to
16 Benchmark and has never been identified as a trade
17 secret.

18 That, in theory, potentially, conceivably,
19 might be something, but it is not, in this case.

20 What this case is about is only the identity of
21 a neighborhood as a good place to prototype.

22 So how is that disclosed by him?

23 In the first place, he signed up that
24 neighborhood; he went and actually did the prototype
25 there.

1 THE COURT: He went to people in the
2 neighborhood.

3 MR. PULGRAM: He went to those people in the
4 neighborhood and he signed them up.

5 And what he says is he went door to door to
6 encourage people and to overcome their initial
7 resistance.

8 He told people, whether they're joining or not,
9 "Hey, I want you to be part of this prototype." And he
10 claims that he invested in establishing that.

11 When he said that to each of those people --
12 and he said that there were over 750 people that
13 ultimately did join, that's what exhibit -- I think it's
14 C to his declaration says, over 750 different people,
15 many others -- he didn't get a hundred percent
16 penetration; he claims 90 percent.

17 So there's at least another 75 people that he
18 went and approached and tried to get to sign up.

19 And he wasn't signing people up to be a
20 customer; he was signing them up to a neighborhood
21 website. He was disclosing that "This neighborhood is
22 the one that I'm prototyping."

23 THE COURT: Did he disclose Lorelei as "the
24 neighborhood"?

25 MR. PULGRAM: Well, he did, and he had to.

1 Because it's a neighborhood website. In other words,
2 what he's setting up -- and, in fact, what he has put in
3 as his evidence in this case -- is that, "I'm setting up
4 a neighborhood website for Lorelei."

5 So when you do that --

6 I'm sorry.

7 THE COURT: Well, the critical question is so
8 what would any individual know that -- would the
9 individual know that it is, in fact, what is being
10 targeted, is the Lorelei neighborhood as qua
11 neighborhood, not something bigger, or Silicon Valley,
12 or Santa -- you know, whatever -- Menlo Park, generally.

13 But, really, this neighborhood, did that become
14 apparent, either by something he said or when they
15 actually signed up, it was entitled, "Network for the
16 Lorelei neighborhood"? Was there anything that was
17 identified to the individual participants that it was a
18 Lorelei neighborhood?

19 MR. PULGRAM: So because it was a neighborhood
20 website it necessarily was talking about "a
21 neighborhood."

22 With respect to whether it was specifically
23 Lorelei, that's the way he described it on the document
24 at the time.

25 If you could find the focus group document,

1 Eric, and see if there's anything on that one in
2 particular.

3 But he is walking door to door in a relatively
4 confined area trying to overcome resistance of those
5 people to share information.

6 THE COURT: Any one recipient might not know
7 what the radius of his sweep was. A neighborhood can be
8 defined many ways. Zip codes. Precincts. Towns.

9 As far as they know, how do they know he wasn't
10 doing the entire -- is this in Menlo Park? Where is
11 this?

12 MR. PULGRAM: It is in Menlo Park.

13 THE COURT: So how does he know he wasn't just
14 doing Menlo Park as a neighborhood?

15 MR. PULGRAM: I can tell you that he's never
16 suggested that that was anything -- the theory that you
17 have come up with is not something that has been
18 suggested in the record as a basis for this to be
19 distinct.

20 The only thing that's been suggested by him is
21 that he did, in fact, go in this neighborhood and that
22 it was the particular location.

23 And he also did say, he said to -- and he put
24 this in the record, that he told the CEO of Nextdoor
25 later that the residents in Lorelei were very

1 enthusiastic about this site.

2 THE COURT: Who did he tell?

3 MR. PULGRAM: He told this to Mr. Tolia, who is
4 the CEO of Nextdoor.

5 THE COURT: Yes?

6 MR. PULGRAM: He said to him -- this is Kelly
7 Declaration Exhibit 2: I don't know if you realize this
8 was -- when we spoke, but the Lorelei neighborhood in
9 Menlo Park was the first beta neighborhood for the
10 Nextdoor/Fatdoor concept.

11 The Fatdoor concept was very popular in the
12 Lorelei and Lorelei Manor neighborhood.

13 He himself identifies it as specific to that
14 neighborhood.

15 And it's interesting that, by the way, he
16 simply gave this information, in Kelly Declaration
17 Exhibit 2, without any pretense of confidentiality when
18 he sent it.

19 THE COURT: Exhibit 2?

20 MR. PULGRAM: Exhibit 2.

21 THE COURT: This is the problem with i-Pads.

22 MR. PULGRAM: I would also -- once I find it, I
23 have one other point.

24 THE COURT: Well, it's going to be hard to find
25 because I have Exhibit A and B. Is there two? Kelly

1 Declaration --

2 MR. PULGRAM: Kelly Declaration --

3 MR. TARABICHI: Your Honor, can I just point
4 out the date on that email is well after the fact?

5 THE COURT: What's the date of that email?

6 MR. TARABICHI: I think it's 2012. It's after
7 they already prototyped in the neighborhood. It's not
8 really relevant.

9 MR. PULGRAM: Well, it's relevant to two
10 things, I think. One is that he wasn't treating this as
11 a secret at that time.

12 MR. TARABICHI: Nextdoor had already destroyed
13 the secret at that point.

14 MR. PULGRAM: He doesn't say that he believed
15 that Nextdoor had used it in that neighborhood.

16 THE COURT: Is there any contemporaneous or
17 time where we don't need to dispute timeliness for where
18 the trade secret was allegedly appropriated and
19 destroyed that shows his disclosure of Lorelei as the
20 neighborhood prototype?

21 MR. PULGRAM: What he states in his own
22 declaration is he describes efforts to transform Lorelei
23 into the ideal neighborhood to test neighborhood social
24 networks by going door to door to establish connections
25 between residents and engage in extensive hand-holding

1 to overcome any initial lack of interest among
2 residents.

3 And this is in his declaration -- I can give
4 you the paragraph number, but it's also opposition,
5 page 1, to the motion.

6 It is building connections between residents in
7 that neighborhood.

8 He's saying to them, "I'm building connections
9 in this neighborhood."

10 The idea that this was somehow broader is not
11 something that the record suggests because, in fact,
12 when you -- if you go on --

13 THE COURT: Well, it's not that he was or was
14 not, in fact, broader; I mean, I assume that this is all
15 correct, that his actual efforts were confined to this
16 prototypical test neighborhood.

17 The question is whether or not any secret
18 nature of this -- which is essential, obviously, to any
19 trade secret be maintained here -- was vitiated by
20 disclosure. And I'm still having problems.

21 Unless he told focus group people or disclosed
22 to the people he went door to door with, "Listen, I'm
23 testing the Lorelei neighborhood, you're part of this
24 neighborhood, and" -- you know, such and such. He just
25 said, "We got this social networking."

1 If he just said neighborhood generally, "I've
2 got neighborhood networking," that's ambiguous whether
3 it's the block, precinct, Lorelei neighborhood,
4 Menlo Park.

5 MR. PULGRAM: One thing that I know and that
6 you may not is that the way Nextdoor.com works is it
7 defines a neighborhood. You are a member of one.
8 That's what you're in.

9 THE COURT: Is there a graphic or something?

10 MR. PULGRAM: Yes, there is.

11 MR. TARABICHI: That's his service. Nextdoor's
12 service.

13 THE COURT: I'm talking about what he did.
14 What they would have seen.

15 MR. PULGRAM: So, in the case of Fatdoor, where
16 they also had graphic descriptions -- and they're in the
17 record, as well --

18 THE COURT: Is there a graphic you can show me?

19 MR. PULGRAM: I don't know that there would
20 be -- we need to look at the Supplemental Statement, and
21 I do think that that was submitted, where he has some
22 mock-ups.

23 MR. WALIA: Your Honor, and if I may add that
24 the record does reflect that the concept, the idea
25 behind what Abhyanker was claiming to be promoting, was

1 a neighborhood network. That it would be limited -- in
2 his own words, it would be limited to only --

3 THE COURT: I get you.

4 MR. WALIA: So when he goes out and he's
5 promoting this and he's marketing this, he's informing
6 people about the Lorelei neighborhood and these are
7 the --

8 THE COURT: That's my question. Did he say
9 "Lorelei neighborhood" or how did they know
10 "neighborhood" was specific to Lorelei, which is the
11 trade secret, as opposed to the local precinct?

12 MR. WALIA: Well, that's the essence of his
13 business plan, that it is limited only to the
14 neighborhood.

15 And that's what he promoted; right?

16 The record, I think, in many of the documents
17 that he's reflected, where he's appended attachments
18 promoting the success of this idea, it was -- and he
19 stated that this was specific to neighborhoods, that we
20 launched it limiting the interaction between people
21 within those neighborhoods.

22 These are -- these were attached to his initial
23 pleadings in this case.

24 MR. TARABICHI: Your Honor, can I address the
25 issue?

1 THE COURT: Yes.

2 MR. WALIA: Thank you.

3 MR. TARABICHI: So when we're looking at the
4 three prongs, obviously I think right now we're talking
5 about that first prong, was it generally known by the
6 public or people who could derive economic value.

7 And I think you've latched onto one business
8 direction that's happening here. It's not that a test
9 was going on in the Lorelei neighborhood, but that
10 Lorelei had been selected and transformed into the ideal
11 neighborhood. That was not disclosed.

12 And I think, you know, if you look at the cases
13 we cite, not being generally known does not mean
14 absolute secrecy's required or that nobody knows the
15 trade secret.

16 And I think that makes sense when you think
17 about things -- other things that could be trade
18 secrets, like compilations of publicly-available
19 information or customer lists.

20 You know, one thing that's really interesting
21 is that *Pyro* case that I cited in our opposition, which
22 says, you know, if something's truly generally known,
23 then the defendant would acquire it by proper means,
24 and, if the defendant acquired it by improper means,
25 that tends to show that it's not generally known.

1 And even though we raise that issue in our
2 opposition brief, nowhere in the moving or reply papers
3 has Nextdoor ever come out to say exactly how they ended
4 up selecting and using this Lorelei neighborhood, which
5 tends to show that it was not generally known.

6 I also want to address one of the things
7 Mr. Pulgram said, which was, you know, Mr. Abhyanker's
8 efforts in methodology in selecting the Lorelei
9 neighborhood.

10 That isn't the identification of the trade
11 secret, but, you know, when you're trying to figure out
12 if something's generally known or not, one thing that
13 you look to is efforts.

14 If it took great efforts to identify the trade
15 secret or compile it or create it, then that tends to
16 show that it's not generally known.

17 And that's what we were introducing that
18 evidence for.

19 I mean, think about it this way --

20 THE COURT: Let me ask you. Is there any
21 evidence that, from your perspective, that the Lorelei
22 neighborhood was identified to the recipients of his
23 efforts as "the neighborhood"?

24 MR. TARABICHI: No, not at the -- an ideal
25 neighborhood for testing social network.

1 I mean, think about it this way. There's two
2 things i want to -- think about if you, you know,
3 decided to go start a neighborhood social network. How
4 would you have known that -- to test your neighborhood
5 social network in Lorelei?

6 If it's generally-known information, you know,
7 where is it? Is it published somewhere? How would you
8 figure that out, if not through, you know,
9 misappropriation.

10 And if you really look at the evidence that
11 Nextdoor has submitted, it's no evidence that Lorelei is
12 publicly known; all they're doing is pointing to
13 statements made by Mr. Abhyanker's unsworn testimony in
14 letters and things like that.

15 And what's funny is when we introduced the
16 declaration by Mr. Abhyanker, suddenly his testimony is
17 self-serving or conclusive or doesn't constitute
18 evidence; but when they want to rely on unsworn
19 statements and twist them around, suddenly they're
20 conclusive that something's generally known.

21 And, you know, I think you've hit on the two
22 points; one being that the fact that the neighborhood
23 was ideal was never disclosed, and, two, the fact that
24 even if there was, you know, some disclosure in Lorelei,
25 which we say was subject to a confidentiality agreement,

1 that does not equate or transform it into being
2 generally known by the public, which is the statutory
3 language.

4 And, you know, if they're going to --

5 THE COURT: But had he disclosed it, had he
6 said -- given a survey instrument of people saying, I am
7 testing this in the Lorelei neighborhood," case over.

8 MR. TARABICHI: Well, I would say, you know,
9 the trade secrets that the Lorelei neighborhood had
10 ideal characteristics for testing, the network, not just
11 that it was being tested only in Lorelei, I mean, I
12 think there's a important distinction there.

13 MR. RAWLINSON: Your Honor, I don't want to
14 talk out of turn. I'm here on a motion to dismiss. But
15 this issue actually impacts both, and I'd like at least
16 a little bit of a chance to address it.

17 First, let me just deal with the secrecy issue.
18 I'm going off the Complaint, and, based on the Complaint
19 in paragraph 119, they appears that they weren't just
20 doing a survey, they had launched a website. Right?
21 There was a prototype website that this group could
22 access. And by accessing that website -- at least as I
23 understand it, if it's defined within a certain area,
24 they would be able to tell that.

25 MR. PULGRAM: And, Your Honor --

1 THE COURT: Wait. Wait. Say that again.

2 MR. RAWLINSON: So this is paragraph 119.

3 The prototype of Fatdoor.com was developed into
4 a working website.

5 So, as I understand, the trade secret -- and
6 I'm going to get to the definition of a trade secret in
7 just a minute, the idea is this was -- you can call it
8 ideal, you can call it very good -- and I'm going to get
9 to ideal here in a minute -- neighborhood to launch a
10 website.

11 They had launched the website. So inherent in
12 that is this is a good place to launch the website.

13 And it is defined as a neighborhood website.

14 Second, if you look at paragraph 147, it is one
15 of three websites that were early websites and early
16 neighborhood and prototype neighborhoods. It was not
17 the one and only.

18 So, you know, I struggle a little bit.

19 And then, finally, in this vein we've been
20 talking about, which is what's the measure of the
21 neighborhood, was it Lorelei, was it some subset of
22 Lorelei, was it all of Menlo Park, I mean, we have a
23 second amended trade secret disclosure which identifies
24 the trade secret and it is four lines long for both
25 trade secrets. And it just says, at that level,

1 "Lorelei neighborhood."

2 If there is something specific about some
3 subset of Lorelei which makes it -- or some super set of
4 Lorelei which makes it important and valuable, that is
5 the trade secret and we were entitled to know it before
6 now.

7 There's been some back and forth and some
8 confusion about this issue of all of the work that was
9 done in order to identify it as the ideal trade secret.
10 That's sort of what I got from Mr. Abhyanker's papers in
11 this process.

12 But that work and that detail and those facts
13 were not ever identified to us as trade secrets; they
14 are not found in the identification of the trade secret;
15 there has never been a mention that specific information
16 was provided to benchmark in anything up until now.

17 If you look in the Complaint -- and we can talk
18 about it later, if we get to talk about my motion --
19 there's nothing, other than this is a good place, ideal
20 place, if you prefer, to launch a neighborhood website.
21 But the neighborhood website had been launched.

22 MR. PULGRAM: And so, Your Honor, if there is a
23 gap in the evidence here, I believe the gap that I'm
24 hearing you identify is does that launch of that website
25 indicate that it is the neighborhood of Lorelei that is

1 the test or could that person believe it was something
2 broader.

3 Because if that person knows that Lorelei is
4 where the test is happening, then it's been disclosed to
5 them.

6 And if there's a gap in that evidence, I have
7 two suggestions: The first is -- because no one on this
8 side has ever pretended for a second -- no one on the
9 counter-claimant's side has ever pretended for a second
10 that if you're in that neighborhood you don't know what
11 your neighborhood is. And anyone who's dealt with this
12 type of business knows that what you identify to the
13 user is your neighborhood. It is all about your
14 neighbors. "FatDoor - Get to Know Your Neighbors."
15 That's their slogan that they did in this test.

16 But one thing that you can see that does
17 carefully reflect that is Exhibit -- is tab docket 153,
18 Exhibit C.

19 THE COURT: Tab --

20 MR. PULGRAM: Exhibit 153. I'm sorry. Docket
21 153, Exhibit C.

22 And these are mock-ups that were provided.

23 THE COURT: What is docket 153?

24 MR. PULGRAM: Docket 153 is the Errata
25 submitted by Mr. Abhyanker to his Supplemental

1 Statement.

2 So it is his augmented pleading of his
3 trademark claim.

4 THE COURT: Okay.

5 MR. PULGRAM: So I could provide a copy, but if
6 I may hand the Court, this is the pages showing what a
7 mock-up the website looks like. It's the neighborhood
8 on a map.

9 MR. TARABICHI: I don't think that's the
10 mock-up for -- that's the Nextdoor mock-up.

11 MR. PULGRAM: That is the Nextdoor mock-up
12 because no one has ever suggested that anyone who is in
13 the Fatdoor neighborhood wouldn't know the scope of the
14 neighborhood they were in.

15 THE COURT: This is not the actual Fatdoor.

16 MR. PULGRAM: That is the mock-up that they
17 have showed that purports to show what their website
18 looked at.

19 Remember, it changes names whenever it feels
20 like it.

21 THE COURT: I don't understand. What is this
22 that I'm looking at?

23 MR. TARABICHI: That was submitted to show
24 Mr. Abhyanker's mock-ups for using the Nextdoor
25 trademark in connection with his trademark claim. It's

1 not really relevant to what we're dealing with here.

2 THE COURT: But whose map is this?

3 MR. PULGRAM: That's his.

4 THE COURT: And what is it of?

5 MR. PULGRAM: It is a map of a neighborhood
6 that appeared on his mock-up of a website that he has
7 submitted as demonstrating his priority of use.

8 So he put this in as purportedly showing what
9 his website prototypes looked like.

10 MR. TARABICHI: Not for the Lorelei
11 neighborhood.

12 MR. PULGRAM: Now, what I'm suggesting is that
13 because no one ever suggested that if you're signed up
14 to a neighborhood you don't know what neighborhood
15 you're in, we should be able to put in the documentation
16 that reflects that fact.

17 It is simply an argument that's never been made
18 and therefore never addressed.

19 THE COURT: So you think you have some
20 documents. You think there are documents that would
21 demonstrate that the Lorelei neighborhood was
22 specifically identified by Mr. Abhyanker in his
23 transformative processes --

24 MR. PULGRAM: I believe that's most likely. I
25 can't say to a moral certainty because no one challenged

1 this point at any time.

2 THE COURT: Well, isn't that a fair -- because
3 your question -- your statement is that was not -- the
4 point I made, I think your statement was Abhyanker did
5 not tell Lorelei residents and they did not know why the
6 neighborhood was ideal from a selectional,
7 transformational point of view.

8 MR. TARABICHI: And probably shouldn't have
9 said not know why. They didn't know it was ideal at
10 all.

11 THE COURT: Well, this is coming from his
12 declaration. And so that's not giving fair notice to
13 the other side. This is something jumped out at me as
14 something that I thought was relatively obvious.

15 MR. PULGRAM: I think it's because you've never
16 been in one of these neighborhoods, unless you care to
17 join ours.

18 MR. TARABICHI: I think it's in our trade
19 secret designation, and so I think they were on notice.
20 I also put it in our opposition.

21 I think, you know, this conversation really
22 demonstrates, I think, why discovery should move forward
23 on this claim.

24 Everyone knows what we're talking about, they
25 know what kind of documents they want to see on the

1 Lorelei trade secret. I think it shows that we've
2 identified it with sufficient particularity to let the
3 scope of discovery move forward.

4 MR. PULGRAM: Well, I think this actually --

5 THE COURT: What you're asking for is if I
6 denied it, it would be without prejudice, if you find
7 evidence that, in fact, the neighborhood was disclosed
8 as "the neighborhood."

9 MR. PULGRAM: Well, actually, I think a little
10 beyond that. If you deny this, we would -- or express
11 the belief or the concern that there's a lack of
12 evidence on this point, that we'd be permitted within 7
13 days to submit a supplement based on whatever
14 information --

15 THE COURT: Oh, you'd need full discovery.

16 MR. PULGRAM: I'm not asking for full discovery
17 at this point, Your Honor. Because this is not
18 something we've ever believed would be an issue and not
19 something we've asked for discovery to prove.

20 If we do need discovery to prove it because we
21 don't have it in our records and can't find it in the
22 public records, the public domain, then that might be a
23 different story.

24 But I'm talking just about we could submit
25 something within 7 days and, if they want to respond to

1 that, that would be okay too.

2 But no one has ever suggested that if you sign
3 up to a neighborhood you don't know what your
4 neighborhood is.

5 No one has ever -- it's not something that --

6 THE COURT: People have different definition of
7 neighborhoods. I mean --

8 MR. PULGRAM: Sure.

9 THE COURT: -- you know, I might consider it
10 "my street." Other people might consider it "my little
11 subdivision." Other people might consider it "this part
12 of town," the north part of town, the west side of town.

13 So that's the problem.

14 MR. PULGRAM: Right. And that's why I would
15 like to demonstrate to you, Your Honor, if we can, by
16 the documents that we can find, that this was plain on
17 the face of the operation that the people were engaged
18 in.

19 THE COURT: Well, normally I would say, you
20 know, people take their best shot, they'd bring the
21 motion. On the other hand, the opposition did not raise
22 this point squarely.

23 As I said, in the declaration it really
24 discusses sort of the why the neighborhood was ideal,
25 from a selectional transformative point of view, and

1 then gets into the methodology that Mr. Abhyanker used,
2 the pushpins and the mathematical formula, et cetera, et
3 cetera, et cetera, which is not being claimed at this
4 point as trade secret.

5 MR. TARABICHI: Well, let me -- maybe I can
6 reiterate why we put that in there. We put that in
7 there to show that he went through great effort, which
8 means --

9 THE COURT: Yes, I know that.

10 MR. TARABICHI: Yeah.

11 THE COURT: But you have never came back with
12 an argument that seemed to me --

13 MR. TARABICHI: It thought it was in the
14 opposition. Perhaps his declaration may be worded a
15 little differently. And I thought it also was in the
16 trade secret designation, which is what they're working
17 off of when they move for summary judgment.

18 Let me see if I can find that.

19 MR. PULGRAM: I would, given the Court's
20 concern, request leave to submit, within 7 days, a
21 demonstration of this point.

22 THE COURT: I'm looking at page 15 of the
23 Abhyanker brief.

24 "Third, the Lorelei residents were not actually
25 told Mr. Abhyanker's Lorelei Trade Secrets -- in other

1 words, they were not told of the process by which
2 the neighborhood was selected or of the special
3 attributes that resulted in it being selected,
4 including Mr. Abhyanker's follow-up manual efforts in
5 the neighborhood."

6 That's different than saying they didn't even
7 know there was a neighborhood.

8 MR. TARABICHI: You know, that's also dealt
9 with in the operative pleadings. You know, we talk
10 about, you know, those efforts that he engaged in.

11 THE COURT: The efforts, but not -- in
12 responding to the motion for summary judgment, all I'm
13 saying is you haven't raised this issue, and if I'm
14 going to rely on this issue in your favor, I think it's
15 fair to give Nextdoor a chance to respond.

16 Because this is an argument that was not
17 clearly asserted or briefed.

18 And I think, as a matter of fairness, I'm going
19 to allow Nextdoor 7 days to file something, I'll give
20 you another 7 days to respond, I'll take that under
21 submission.

22 MR. PULGRAM: Thank you, Your Honor.

23 May I turn to the question, then, of whether or
24 not there has even been proof of any actual obligation
25 to treat this as a secret?

1 In other words, there was an oblique reference
2 to a disclosure to Mr. Sood of the secret, but there's
3 no evidence in the record of any confidentiality
4 obligation of Mr. Sood, other than the statement that,
5 "I had a confidentiality agreement." There's no --

6 THE COURT: All right, I'll let you address
7 that briefly.

8 MR. PULGRAM: Well, there simply isn't a
9 contract. Where's the contract?

10 With respect to Benchmark -- and Mr. Rawlinson
11 can speak more to this himself -- there's an obligation
12 of an oral agreement to keep this secret.

13 So, again, assuming they ever heard about the
14 Lorelei, either one of them, and assuming what they
15 heard was a secret in some way, there's no proof of any
16 obligation of confidentiality on the part of either of
17 these recipients. Mr. Sood, no agreement whatsoever,
18 and with respect to Mr. Rawlinson, only the allegation
19 of an oral -- and therefore barred by the statute of
20 frauds -- agreement.

21 Absent proof of an agreement, there has been no
22 preservation and there's been loss of the trade secret
23 status of the disclosure.

24 MR. TARABICHI: Your Honor, can I address that?

25 THE COURT: Yes.

1 MR. TARABICHI: So we're under that second
2 prong. Did the trade secret owner take reasonable
3 measures to protect the secrecy of the trade secret.
4 That's the language of the statute.

5 And it's clear that, you know, we have
6 introduced evidence of efforts that we're taking. The
7 disclosure to Benchmark was pursuant to a
8 confidentiality obligation --

9 THE COURT: Under what?

10 MR. TARABICHI: There was a oral agreement, but
11 then also, if you look at the due-diligence CD, that was
12 all marked confidential.

13 We have produced the agreement with Mr. Sood
14 that has a confidentiality provision in there.

15 THE COURT: Why don't you tell me where, in the
16 record, that is. You said there is a Sood
17 confidentiality provision --

18 MR. TARABICHI: There's an agreement. I don't
19 know that it was introduced, but it's been produced to
20 Nextdoor. In the supplemental -- if we're doing the
21 supplemental brief, we can attach it as an exhibit.

22 THE COURT: That issue was raised in the
23 motion, was it not?

24 MR. TARABICHI: It was really -- their argument
25 was more that we didn't take reasonable efforts in terms

1 of requiring secrecy to the Lorelei residents, as
2 opposed to Mr. Sood.

3 So that was really the focus, if you look at
4 their moving papers.

5 They may have raised it in their reply, but we
6 couldn't, you know --

7 THE COURT: But if their argument is that you
8 didn't take -- your client didn't take reasonable steps,
9 then the natural comeback is, "Oh, yes, we did; here's
10 the confidentiality --

11 MR. TARABICHI: It's in his -- he's testified
12 to it in his declaration. And then we've also put in
13 testimony about the confidentiality agreements put in
14 place with Lorelei residents, as well.

15 So, you know, you're talking about were efforts
16 taken? There were definitely some efforts taken. Were
17 they reasonable? That's a question of fact for the
18 trier of fact to decide.

19 THE COURT: Well, I want to see the Sood --

20 Where did you first make the argument,
21 Mr. Pulgram, that --

22 MR. PULGRAM: Your Honor, I think generally
23 with respect to the failure to reasonably protect the
24 trade secrets and reasonably ensure their
25 confidentiality.

1 What struck me was their reliance in their
2 declaration on nothing other than a representation of an
3 agreement that was undefined and hadn't been submitted.

4 And that's where we submitted an objection on
5 the best-evidence basis that there was no proof of any
6 obligation with Mr. Sood that covered this.

7 THE COURT: All right.

8 So it's clear that nothing is before this Court
9 currently with respect to any written confidentiality
10 agreement with Sood, but it's been represented to me now
11 that there was such an agreement; is that right?

12 MR. TARABICHI: We produced it to them;
13 correct.

14 THE COURT: Well, rather than dance around the
15 procedure, is there or is there not such an agreement?
16 Has something like that been produced?

17 MR. PULGRAM: Yes, Your Honor. They produced
18 something, but it doesn't have Mr. Abhyanker's name on
19 it.

20 THE COURT: Whose name was on it?

21 MR. PULGRAM: Another identity.

22 MR. TARABICHI: It was his law firm. All the
23 assets and interest from that law firm had been assigned
24 to him personally, so he's the successor to that
25 agreement.

1 MR. PULGRAM: There's no proof of Mr. Abhyanker
2 being bound to an agreement, that I've seen. There's
3 certainly none in the record here.

4 If -- look, you know, goose and gander. If he
5 has something that he wants to present, I'm -- at the
6 risk of burdening you with more filings.

7 THE COURT: All right. Well, I'll take
8 additional evidence. I don't want a whole lot of
9 briefing; I just need the evidence.

10 MR. PULGRAM: Yes, Your Honor.

11 THE COURT: Because I'll give you a chance,
12 although this one -- seems to me that this issue was
13 raised, unlike the other issue.

14 But in the interest of more than due process,
15 I'm going to give you a chance to submit to me
16 whatever -- within 7 days -- evidence with respect to
17 confidentiality, you know, anything more that you have
18 to show that reasonable efforts were taken and, in fact,
19 there was an obligation to keep this information
20 confidential.

21 Assuming it was a trade agreement, which may or
22 may not be the case.

23 And I'll give Nextdoor 7 days to respond as
24 well.

25 MR. WALIA: Your Honor, if we may also respond

1 to that because it goes directly to our client.

2 We haven't seen it and my client indicates that
3 he never signed any such agreement.

4 THE COURT: Okay. All right.

5 Let's talk about the other sort of trade
6 secret.

7 MR. TARABICHI: Your Honor, just some clarity
8 on what we're submitting.

9 You're saying we're submitting a brief first
10 and then they're --

11 THE COURT: You're going to submit not even
12 a -- you're going to call it a brief. I'm looking at
13 evidence. You say there was a confidentiality agreement
14 that bound Mr. Sood.

15 MR. TARABICHI: Right.

16 THE COURT: And anything to support that your
17 client was a beneficiary and has -- sustaining that
18 agreement.

19 So if there's -- you've heard, now, a preview
20 that his name's on it; you're going to have to show some
21 kind of chain or something to show that there was an
22 obligation.

23 It goes to both reasonable -- reasonable
24 efforts to maintain secrecy, it goes to whether there
25 was a breach at all.

1 MR. TARABICHI: And the reason I'm asking, is
2 he was also -- Mr. Pulgram was also talking about
3 Nextdoor filing their own brief on the identification of
4 the Lorelei issue.

5 THE COURT: Yes, I'm giving him 7 days to
6 respond to the point I raised that Lorelei neighborhood,
7 if not specifically identified and known to the
8 recipients, thereby disclosed to the focus group or
9 people he went door to door to, then I have serious
10 questions about whether the neighborhood, itself, has
11 been disclosed. Which is the trade secret; not the
12 methodology.

13 MR. TARABICHI: So we're each submitting
14 something in 7 days.

15 THE COURT: Yes. Each submitting something in
16 7 days, and you'll both, then, submit cross responses to
17 that.

18 MR. TARABICHI: Got it.

19 THE COURT: So there will be four short
20 submissions.

21 MR. PULGRAM: Yes, Your Honor.

22 THE COURT: Evidence. I don't need a whole lot
23 of legal argument, at this point.

24 MR. TARABICHI: Is there a page limit on that?
25 I know you want it short, just -- so we're --

1 THE COURT: With that question, I think I
2 should --

3 I mean, I don't need more than 3 pages. You
4 just tell me what it is.

5 MR. PULGRAM: Yes, Your Honor.

6 THE COURT: It's the evidence. Give me the
7 document, where it came from. You have to explain where
8 it came from or whatever, that's fine.

9 I don't need re-briefing about the test for
10 trade secrets or what a reasonable effort is, et cetera,
11 et cetera. Because you've already briefed that.

12 Bidding history.

13 Here there's no dispute, it seems to me, that
14 to the extent bids were, in fact, submitted, that
15 there's no -- there was no confidentiality obligation
16 imposed upon the receiver of the bidder; correct?

17 MR. TARABICHI: On the domain-name owners;
18 correct.

19 THE COURT: Yes.

20 So in that case what prevents the domain name
21 owner who's going to sell it from playing on one bid
22 against another? I mean, people do that all the time.

23 MR. TARABICHI: Right. So really what you're
24 talking about is could they have figured it out by going
25 to the domain name owner. And that's the readily

1 assertible affirmative defense, where people say I went
2 and I got it through proper means by someone who was
3 under no obligation to keep it confidential.

4 That affirmative defense goes to
5 misappropriation, which is not the element that they're
6 moving on, they're moving on was it a trade secret, and,
7 two, it requires actual evidence that the defendant did
8 use proper means to acquire it.

9 So yeah, perhaps they could have gone to a
10 domain name owner, but is that what happened here?
11 There's no declarations, no evidence, that that's what
12 happened.

13 Really, what we're looking at is, you know,
14 generally -- is it generally known by the public or
15 those who could obtain economic value from it.

16 And I don't know how someone who wants to bid
17 on the Nextdoor.com domain name would be able to figure
18 out, you know, Mr. Abhyanker's domain name, bidding
19 history, and valuation, you know. Because that's not
20 published anywhere. That's not public information.

21 THE COURT: Why doesn't that go to whether
22 there were reasonable efforts to maintain secrecy?

23 MR. TARABICHI: It does also go to that prong.

24 And so, you know, there's the word "reasonable"
25 there. And, you know, he took other efforts, in terms

1 of maintaining the secrecy of the domain name.

2 So when he's disclosing those to Sood and
3 Benchmark, those are done pursuant to confidentiality
4 agreements and obligations.

5 And, you know, there's no way for him, when
6 making a bid to an anonymous domain-name owner, to
7 impose confidentiality obligations.

8 So our position would be that that would not be
9 reasonable, and what he did do was sufficient in terms
10 of reasonable efforts, and then it's a question of fact
11 whether what he did was sufficient under the
12 circumstances.

13 THE COURT: What were his efforts to maintain
14 secrecy in this context?

15 MR. TARABICHI: So he disclosed it to Sood and
16 Benchmark, and both of those entities were under
17 confidentiality obligations.

18 So, you know, other than, you know, the offers
19 made directly to the owners, the disclosures -- all
20 other disclosures were made confidentially. And our
21 position would be those efforts were sufficient and
22 reasonable under the circumstances that we're talking
23 about.

24 And our other position is it's a question of
25 fact.

1 THE COURT: All right.

2 Mr. Pulgram, what can one do -- if you're
3 putting in a bid under these circumstances, you know who
4 the recipient is, what more can you do?

5 MR. PULGRAM: Well, if you want it to be
6 confidential, you have to send that person something
7 saying, "I want to submit to you a confidential bid" and
8 have them say yes.

9 There are some things in this world that don't
10 get confidentiality protection. Just because the other
11 side hasn't agreed to it, doesn't mean you can somehow
12 claim it for yourself.

13 The ascertainable point here is really a red
14 herring. The ascertain-ability situation is this: You
15 have a customer list. You've developed it. You've
16 bound people in your employment to keep it confidential
17 and not to take it. Okay? You have done enough to try
18 to keep this secret. You have, you know, followed
19 reasonable precautions.

20 Someone might come in and say, "You know what?
21 That's reasonably ascertainable. I can put that
22 together from the Yellow Pages or from the list that I
23 can get out there somewhere else."

24 So even though you have taken reasonable
25 precautions, I'm able and capable of ascertaining it.

1 That's not what happened here. Here someone
2 took the customer list and gave it away to their
3 customers and said, "Here are all the customers that I
4 go to. Don't bother with an NDA, I just want you to
5 know who all my good customers are. Here's my bid. I
6 want you to know how much the bid is."

7 So there's been no effort to maintain any
8 confidentiality, none at all, and the ascertain-ability,
9 therefore, is not the point.

10 THE COURT: So the obvious response seems to me
11 that the reasonable efforts would have included asking
12 for -- that the bid be kept confidential.

13 MR. PULGRAM: Exactly.

14 THE COURT: Which is done sometimes when people
15 bid on real estate or matters. You don't want your bid
16 to be shopped, you get an agreement, "Don't shop my
17 bid."

18 MR. PULGRAM: Exactly. And if you are actually
19 going to make a bid in an auction in a public place, if
20 you're going to make a bid with something that isn't
21 labeled as confidential, the person who receives that
22 bid has the right to use it any way he or she wants to.

23 Once they have received it, what kept -- in
24 fact, nothing kept Mr. Watson, if he had gotten a bid
25 from Nextdoor, to take it and shop that somewhere else.

1 That's the way the world works in bidding. And there's
2 no bases on which someone can claim that that
3 information can't be used because they don't want it to
4 be.

5 MR. TARABICHI: But there's no --

6 MR. PULGRAM: If you want that to be the case,
7 if you want to have secrecy in your bid, you have to get
8 someone to commit to it.

9 MR. TARABICHI: But there's no evidence any of
10 that happened. There's no evidence they obtained the
11 information through Watson, you know.

12 THE COURT: That goes to a different issue.
13 I'm talking about not -- that's a different issue. The
14 issue is whether or not reasonable efforts were
15 undertaken.

16 And your position is yeah, they did. Because
17 they got -- and maybe this is in dispute --
18 confidentiality agreements from Benchmark and Sood, but
19 they didn't get one from the -- from the bid recipient,
20 your argument, in your brief, is that, "Well, that's not
21 reasonable, you can't do that, it's not the custom, when
22 you bid on domain names, and so that was not a
23 reasonable effort."

24 MR. TARABICHI: That's true.

25 THE COURT: And your response to that is,

1 "Well, you take it as you find it."

2 MR. RAWLINSON: There's one other issue, Your
3 Honor.

4 Putting aside the reasonableness of the
5 efforts, there's also a black letter rule, which I think
6 trumps this, which you cited in your opinion earlier in
7 this case, which is, under California law, an
8 unprotected disclosure of information terminates the
9 existence of a trade secret.

10 The test isn't whether it's generally known and
11 you stop there. The question is, if you give a third
12 party the right to distribute your trade secret without
13 protection, that ends the trade secret. That's the end
14 of the story.

15 That's our view, Your Honor.

16 THE COURT: There's an issue if it's done
17 negligently --

18 MR. RAWLINSON: Sure. And I don't think any of
19 the cases cited by Mr. Abhyanker stand for the
20 proposition that you can intentionally disclose your
21 trade secrets to even a single party and maintain its
22 trade secret status.

23 To me that's the core of that dispute.

24 The cases cited by Mr. Abhyanker are generally
25 about what lengths you must go to to preserve secrecy

1 and prevent someone from misusing your trade secret.
2 None of them stand for the proposition that you may
3 intentionally disclose the trade secret to even a single
4 person with no protection and still call it a trade
5 secret.

6 MR. PULGRAM: And that's exactly what the
7 *Ruckelshaus* case out of the Supreme Court says.

8 If an individual discloses his trade secret to
9 others who are under no obligation to protect the
10 confidentiality of the information, his property right
11 is extinguished. 467 U.S. at 1002.

12 MR. TARABICHI: Your Honor, I would direct the
13 Court to all those cases we cite on page 15 of our
14 opposition where, you know, they stand for the
15 proposition that limited disclosures may not destroy the
16 trade secret.

17 And, you know, we've cited the *K-2 Ski* case,
18 *Gable-Leigh*, *Hirel Connectors* case and *AAA Blueprint*.
19 And I think if you look at those it's not as black and
20 white as they're trying to make it out to be.

21 MR. PULGRAM: Well, the *K-2 Ski* case is a
22 really good example. The allegation was that because
23 you allowed visitors to your plant you've lost your
24 trade secret. But the visitors weren't allowed to see
25 the part of the plant where they made the skis. So they

1 hadn't disclosed the secret to that person. Had they
2 done that, they couldn't claim that because someone
3 walked in and looked around their plant and didn't sign
4 an NDA they couldn't necessarily --

5 THE COURT: So there was no actual disclosure
6 of the trade secret.

7 MR. PULGRAM: There was no actual disclosure of
8 the trade secret.

9 THE COURT: So the statement in their brief
10 that even limited public disclosures may not destroy
11 trade secrets when the disclosure does not result in a
12 trade secret becoming generally known to the public or
13 those that can't derive economic value from it is not an
14 accurate statement of the law.

15 MR. PULGRAM: I don't believe that is an
16 accurate statement of the law under the California case
17 law.

18 MR. TARABICHI: Your Honor.

19 MR. PULGRAM: And --

20 MR. TARABICHI: Look at the other cases, as
21 well. You know, there's a case where the information
22 was published on the Internet and the Court held that it
23 did not necessarily destroy the secrecy.

24 MR. PULGRAM: It wasn't published by that
25 person; it was published by another. The person did not

1 voluntarily, themselves, disclose it.

2 If you take Apple's stuff and put it on the
3 Internet, that doesn't mean Apple can't try, if they
4 have engaged in reasonable activity, to continue to
5 claim it as a trade secret.

6 MR. TARABICHI: There's plenty of case law that
7 talks about absolute secrecy not being required.

8 MR. PULGRAM: It's true --

9 THE COURT: Yes, but when you voluntarily
10 disclose to someone -- are you saying unless you
11 broadcast it to the general public you can still
12 maintain a trade secret status?

13 MR. TARABICHI: Yeah, if it doesn't fall into
14 that first prong, which is generally known to the
15 public --

16 THE COURT: That's in the first instance
17 whether it is a trade secret, but we're not losing the
18 trade secret.

19 MR. TARABICHI: That's how you lose it.

20 THE COURT: Well, all of these cases I'm very
21 skeptical because I think I've held to the contrary in
22 and other cases, but --

23 MR. RAWLINSON: Yeah, Your Honor. Our view of
24 that is that those cases stand only for the
25 proposition -- and we can work through the specifics --

1 that you need not go to extraordinary lengths to
2 maintain the trade secret status. So how many of your
3 employees may you disclose it to? You know, how
4 strongly must you guard the facility to make sure no one
5 gets in? Must you have everyone guard it at all times
6 when they walk through the plant?

7 None of those, in our view, stand for the
8 proposition that the trade secret owner can disclose
9 intentionally and voluntarily to a third party with no
10 requirement that they maintain the secrecy and still
11 maintain trade secret status. To the contrary, we think
12 that's directly contrary to California law.

13 THE COURT: All right. Well, I'm very likely
14 to find that there's no actual trade secret on that
15 count. I'm very inclined to grant summary judgment
16 and, therefore, the motion to dismiss on that count.

17 The Lorelei count, I'm going to wait and see
18 what the evidence is. If there is no evidence that the
19 neighborhood itself was identified in an express way,
20 then I don't think the secrecy argument of Nextdoor
21 prevails.

22 On the other hand, if there's evidence that
23 this was -- again, same principle -- if this was
24 disclosed deliberately, without a confidentiality or
25 evidence of any confidentiality obligation, for

1 instance, to Mr. Sood, or Benchmark -- but it sounds
2 like there's at least some assertion and an oral
3 understanding with Benchmark, that, you know, that may
4 be the critical issue in this case, and with respect to
5 that particular claim.

6 So 7 days and 7 days. And then I'll take the
7 matter under submission officially at that point. I
8 don't think I need any further briefing.

9 MR. PULGRAM: I just wanted to add one footnote
10 on Lorelei, if I could. There actually is an
11 explanation in the record, and it's in the conversation
12 that they submitted, Exhibit J, as to exactly how it was
13 that Nextdoor.com came to use that neighborhood. And
14 that was that the homeowner association head of Lorelei
15 was a friend of Defendant Janakiraman. That was the
16 explanation.

17 THE COURT: Say that again.

18 MR. PULGRAM: The homeowner's association for
19 the Lorelei neighborhood --

20 THE COURT: Mm-hm.

21 MR. PULGRAM: -- was a friend of Prakash
22 Janakiraman, the defendant in this case, and that is
23 what is submitted in their Exhibit J as the explanation
24 for why it is that Nextdoor found that neighborhood.

25 MR. TARABICHI: He's saying that, but that

1 hasn't been submitted in any declaration or under oath.

2 MR. PULGRAM: You submitted it.

3 MR. TARABICHI: It's an assertion. You moved
4 to strike it.

5 THE COURT: Well, wait. Exhibit J to what?

6 MR. PULGRAM: To Mr. Abhyanker's Declaration.

7 THE COURT: So you want to strike your own
8 exhibit?

9 MR. TARABICHI: No, I said he moved to strike
10 it; now he's trying to rely on it.

11 THE COURT: Well, it should be an estoppel,
12 then. So it depends which part of that motion I should
13 take first.

14 All right. Well, that's very interesting.

15 So let's leave it as it is, and I look forward
16 to seeing whatever additional stuff you submit.

17 We do have a discovery matter that I'd like to
18 resolve here. I'm not sure I fully understand it. But
19 there's a question about whether or not Abhyanker's
20 Verified Responses to the Interrogatories should be --
21 should include statements made by his counsel.

22 Is that the gist of it? Basically, certain
23 things were said?

24 MR. PULGRAM: Well, there's certain things that
25 were written in meet and confer correspondence, and they

1 are attached as Exhibit Q to Ms. Kelly's Declaration.

2 I have extra copies if, Your Honor, it would be
3 convenient.

4 THE COURT: Well, before I get to that level.
5 But the gist is these -- whatever was -- I think I have
6 that, the December 20th, 2013, letter?

7 MR. PULGRAM: Yes, Your Honor.

8 THE COURT: So what you want -- what are you
9 asking for, exactly?

10 MR. PULGRAM: What we ask for and what Your
11 Honor previously stated at the December 12th hearing was
12 that if there are facts that have been provided as
13 explanations in meet and confer that were not in the
14 interrogatories, that they be verified.

15 And what Your Honor previously said on the 12th
16 at page 15 was as long as there's not a relevancy
17 problem, seems to me it's fair to back up whatever those
18 sorts of facts are with the verification.

19 And the problem that we're facing here, Your
20 Honor, is the ever-changing nature of Mr. Abhyanker's
21 claims.

22 Key example: In the trade secret disclosures
23 and then in interrogatory responses he stated that he
24 had no recollection of any bids, no recollection of when
25 or the amount other than one bid for \$1,300 in 2006.

1 They produced that one document, they said he
2 has no recollection of anything else.

3 And specifically what they said in their meet
4 and confer letter was except for an offer in one email,
5 these offers were done over the phone; therefore, other
6 than the documents produced, Mr. Abhyanker does not have
7 any additional responsive documents and he simply is
8 unable to recall the particular details of the
9 negotiations and offers made over the phone.

10 That's what they said in a letter.

11 And we said if that's the case, when we ask you
12 about what efforts you have made to buy the -- to bid,
13 you need to say that. You said -- you need to say that
14 you're unable to recall the particular details of the
15 negotiations and offers made and you need to verify
16 that.

17 And you need to do that so that we won't have
18 what happened in this motion happen again, which was the
19 creation out of thin air of a set of bids that are
20 discussed in a vague and general way but with numbers,
21 with purported numbers, in his declaration.

22 So our view is in that example they need to say
23 he's unable to recall anything else.

24 Another example.

25 THE COURT: That's enough.

1 What's the problem with standing behind what
2 the attorney represented and making that a part of a
3 verified response?

4 MR. TARABICHI: Well, I think if -- our
5 position is, if you look at our actual interrogatory
6 responses, in response to the actual question being
7 asked, we've provided a full and complete response.

8 And, you know, if we went through everything
9 that they're trying to ask us to include, you'll see
10 that some of it isn't even responsive to the question
11 that they've asked, and some of it, you know, that
12 they're asking us to supplement, are, I believe, their
13 own statements.

14 You know, I thought we were doing the CMC, so I
15 don't have that information in front of me on the
16 discovery.

17 THE COURT: All right.

18 So their statement, I understand why you were
19 not obliged to adopt that. But if it's counsel's
20 statement on behalf of Mr. Abhyanker in the context of
21 meet and confer, sufficiency of responses of particular
22 interrogatories, and now that's been given, do you have
23 a theoretical problem with saying, "Yeah, I adopt those;
24 attach this to a declaration or a verified response, and
25 adopt these?"

1 MR. TARABICHI: Well, I have two responses to
2 that. One is they've already served additional requests
3 asking us to admit each of those statements, so this is
4 really a dispute over nothing.

5 Two, you know, on a whole, some of them are
6 more objectionable than others.

7 And, you know, I wish I had all that
8 information in front of me.

9 But I think if you went through and looked at
10 the --

11 MS. NORTON: Your Honor, if I may jump in for
12 just a minute.

13 Interrogatories 2 through 4 is an example of
14 what Mr. Tarabichi was referring to in that the
15 interrogatories request that Mr. Abhyanker state all of
16 the facts supporting his claim to ownership of the
17 Fatdoor and the Fatdoor - Get to Know Your Neighbors and
18 Get to Know Your Neighbors mark, and he responded to
19 that interrogatory.

20 What Nextdoor is actually requesting now is an
21 explanation of why Fatdoor does not own the marks, which
22 isn't what they were asking in the interrogatories.

23 And so some of the -- as Mr. Tarabichi says,
24 some of the requests are more objectionable than others,
25 but we would like the opportunity to set forth fully our

1 positions with respect to each interrogatory and we were
2 not able to do that within the space limit of the
3 letter.

4 But some of the information that they're
5 requesting is just not relevant to the interrogatories.
6 And we would request -- we have requested that they
7 simply serve discovery requests that directly ask for
8 what they were seeking, and they have now done that in
9 the form of RFAs.

10 So as my colleague said --

11 THE COURT: They've done that in the course of
12 what?

13 MS. NORTON: They've served request for
14 admissions which point by point ask for an admission as
15 to whether each statement that they want to have
16 incorporated into the interrogatories, they ask whether
17 that statement is true.

18 So this dispute, really, is moot at this point,
19 in that they will get that, the information that they're
20 seeking, and we have requested previously that they
21 simply provide us with discovery requests asking for
22 exactly what they are seeking and they've now done that.

23 THE COURT: Well, all right. Let me ask you.
24 If you've got an RFA out on each of the critical points
25 you want, why doesn't that cover this?

1 MR. PULGRAM: These interrogatories were served
2 last spring. We met and conferred on them in September.
3 There's no admission to the request for admission, and
4 they can easily be denied or qualified or otherwise.

5 We just want a verification of the truth.

6 Take, for example --

7 THE COURT: If they admitted, that would
8 obviate this.

9 MR. PULGRAM: But, they haven't admitted it.

10 THE COURT: What's the status?

11 MS. NORTON: Our responses aren't due yet;
12 they're due next week.

13 THE COURT: Well, why don't you give me a
14 preview?

15 MS. NORTON: We're still working on them. Our
16 client is currently out of town, so we haven't been able
17 to discuss them, but they will receive substantive
18 responses to their request.

19 MR. PULGRAM: Your Honor, we should not have to
20 wait for another round of meet and confers to get what
21 they said.

22 THE COURT: This is my concern. Then there's
23 going to be a denial or qualified admission and this and
24 that --

25 MR. PULGRAM: We asked them to state -- it's

1 quotations from them.

2 With respect to the ownership of Fatdoor --
3 it's on the page in front of you -- they say in -- they
4 won't say in an interrogatory response what they say in
5 their letter. That after he left Fatdoor, et cetera.

6 THE COURT: All right.

7 This is what we're going to do. This is what
8 we're going to do.

9 Anything that counsel has represented on behalf
10 of the client, ought to be verified. Now, whether you
11 do that in an accelerated way, in the request for
12 admissions, or whether you do it by amending and
13 supplementing the interrogatory response, I don't really
14 care.

15 But, as a matter of principle, something that
16 an attorney represents -- they are the authorized agent
17 of the client -- binds the client, unless it is a
18 fundamental decision like waiving, dismissing the case,
19 or something like that that's binding and that ought to
20 be -- that's the principle.

21 So I'm going to direct you to meet and confer,
22 work it out.

23 MR. TARABICHI: Okay. Can I ask a question
24 real quick?

25 If they're asking us to supplement with the

1 response that answers a different question, isn't that
2 an issue we should be concerned about? An interrogatory
3 they haven't served?

4 THE COURT: Well, then we get into whether or
5 not this is directly responsive or whether this is
6 derivative to a potential follow-up interrogatory.
7 That's why I said I don't care how you do it. You can
8 do it by stipulation, you can do it by stipulated
9 further interrogatories with stipulated response
10 thereto, you can do that by admitting on the request for
11 admissions.

12 If it's relevant, it's going to come out. And
13 I don't want to spend time, and your client's time,
14 fussing about, "Well, this interrogatory didn't exactly
15 ask you this question so why don't you propound set
16 No. 16 and then we'll think about answering that."
17 We're not going to do that. Just stipulate.

18 Next.

19 MR. RAWLINSON: Your Honor, and I don't want to
20 try your patience; I'm sure I already have. Can I have
21 just five minutes on the motion to dismiss?

22 MR. PULGRAM: We've got a couple more on the
23 discovery, Your Honor.

24 THE COURT: No, I want to get through issues.

25 MR. PULGRAM: So, issue No. 2.

1 The next big issue in this lawsuit, Your Honor,
2 is going to be priority of trademark use. And there is
3 one website in which we believe Mr. Abhyanker has begun
4 use after the launch of Nextdoor.com in an effort to
5 pretend to have used earlier.

6 And this website is called eDirectree.com.

7 We've asked interrogatories for them to specify
8 exactly how they used -- how he purports to have used
9 the term "Nextdoor" on eDirectree.com before the launch
10 of Nextdoor.

11 Have you got the copies?

12 And their response has been to say, "Here's a
13 document that reflects how that use happened."

14 I'm going to show you the document, if I may.
15 Because this is the key point.

16 The document is not from before the launch of
17 Nextdoor.com.

18 May I? Thank you, Ms. Lee.

19 This is a document that they have acknowledged
20 was printed in October 2, 2013. It purports, according
21 to them, in meet and confer with counsel, to reflect the
22 website as it was taken down in October of 2012 when we
23 filed the lawsuit -- after we filed the lawsuit.

24 And on page 371 you'll see, about dead center
25 on the page, a tiny little reference that says

1 "NextdoorTM neighbors."

2 That NextdoorTM neighbors is what they now
3 purport to be their trademark use that predated the
4 launch of Nextdoor.com, and this is what they're hanging
5 their claim to priority on.

6 MR. TARABICHI: It's also on the first page at
7 the top.

8 MR. PULGRAM: It is also on the first page.

9 Now, prior to this, according to the Internet
10 archive, prior to this time, that NextdoorTM neighbors
11 said "Friends."

12 That NextdoorTM neighbor was plugged into this
13 website at some point, and we're trying to determine
14 when that is.

15 This particular print we know was not from 2008
16 or 2009 or before 2011 because if you look at the first
17 entry in the upper right-hand side of 371, you'll see a
18 link to T time and you'll see next to it updated on
19 August 13th, 2012.

20 Obviously, this was after 2011.

21 MR. TARABICHI: There's no dispute about that;
22 we agree.

23 MR. PULGRAM: So what we have asked is that
24 they specify in their interrogatory exactly when and
25 exactly how and exactly with what affect Nextdoor was

1 ever used on this website before the launch of the
2 Nextdoor.com website. And their response is, "Look at
3 the document."

4 In fact, to quote their response in the letter,
5 they say Mr. Abhyanker responded that he used the
6 Nextdoor trademark and he directed Nextdoor to a
7 screenshot.

8 THE COURT: Okay.

9 MR. TARABICHI: That's how they used it.
10 That's exactly how it --

11 THE COURT: That doesn't answer the question.
12 You cannot respond to an interrogatory by saying, "Look
13 at the document; it's self-explanatory," when it's not
14 self-explanatory.

15 MR. TARABICHI: Well, I think we also said we
16 used it, it appeared on the website, and -- "So you can
17 see how it appeared on the website, look at this
18 document we've produced."

19 And that's exactly how it appeared on the
20 website. There's not much more to say.

21 You look at it, at the top of it --

22 THE COURT: Does it say -- do you say that it
23 was used prior to October 26, 2011?

24 MS. NORTON: That was inherent in one of their
25 questions.

1 MR. TARABICHI: I think we put dates in there.
2 I didn't know we were going to go through these one by
3 one, so I don't have a copy of our responses in front of
4 me.

5 MS. NORTON: That date was in one of their
6 interrogatory questions, so our response necessarily
7 indicated that it was prior to that date.

8 THE COURT: Okay. Number 1 asks identify all
9 public uses by you on the name Nextdoor in connection
10 with any service prior to October 26, 2011, including
11 documents shown in that use.

12 MR. TARABICHI: But they put the date in there.

13 THE COURT: Yes, that's their case. And in
14 your responses you refer to Bates number -- et cetera,
15 et cetera, et cetera. Doesn't include 370. I don't
16 know what these other documents are.

17 Number 5 asks, state all facts supporting your
18 claim to ownership. And that's a little different.
19 Perhaps related.

20 Ten asks, identify all products and services
21 that you have marketed and offered in connection with
22 the eDirectree.com website, and that's a little
23 different.

24 Eleven asks, identify any use of the term
25 Nextdoor or any variation thereof on the eDirectory.com

1 website prior to February 9th, 2012.

2 And then the answer is -- after several
3 objections, Respondent Nextdoor appeared on the
4 eDirectree website. Doesn't say when.

5 It refers to Nextdoor documentation Bates 129
6 and 130.

7 What are 129 and 130?

8 MR. PULGRAM: Well --

9 MR. TARABICHI: It might be -- you know, they
10 might also be --

11 THE COURT: It might be this.

12 MR. PULGRAM: I believe it's a typo, but it is
13 actually an article, "eDirectree Brings Group Wiki Twist
14 to Social Networking."

15 MR. TARABICHI: It should not refer to that, I
16 don't think.

17 MR. PULGRAM: So I think that what it meant to
18 refer to most likely was this screenshot.

19 Interrogatory No. 10 is a really good example.
20 Identify all products or services that you have marketed
21 or offered in connection with eDirectree.com website
22 including documents identifying them.

23 There is no specification of what products were
24 marketed on this site. There isn't anything. If you
25 look at this page, you can't see any products or

1 services offered or marketed.

2 (Indiscernible, simultaneous speaking.)

3 THE COURT: One at a time.

4 MR. PULGRAM: There's no products or services
5 that are identified.

6 And all there is down here is an objection and
7 reference to a page number, without under oath, stating
8 what you claim was marketed under this brand name.

9 And with respect to No. 1, there's nothing that
10 says, "We began on such and such a date to use
11 Nextdoor.com, NextdoorTM neighbors, to do anything."

12 What does it do? What is the use?

13 Because the question will be whether or not
14 this has been used in a source-identifying way that can
15 be commercial use, as well as whether it was used before
16 Nextdoor.com was launched.

17 So we need narrative, accurate answers to the
18 key questions for the case.

19 MR. TARABICHI: Your Honor, if you go back and
20 look at the interrogatory he was referencing about
21 identify all products or services you used in connection
22 with that mark on the eDirectree, I don't have our
23 answer, but I know we answered it. And, to me, that,
24 you know, if someone can read that answer --

25 THE COURT: No, the answers are, "We refer you

1 to document Bates No. 129 through 130." There's no
2 narrative, and with respect --

3 MR. TARABICHI: Are you looking at our
4 Supplemental Verified Responses?

5 THE COURT: No.

6 MR. TARABICHI: So we -- we already
7 supplemented, so you might be looking -- they might
8 have -- you know, see, they might have introduced a
9 different -- our first version, which we updated.

10 THE COURT: Let's see.

11 MR. PULGRAM: This is the supplemental
12 objection and responses.

13 MR. TARABICHI: So that's --

14 THE COURT: Is that attached?

15 MR. TARABICHI: So that should be Abhyanker's
16 Exhibit 1.

17 So those are our operative answers, and maybe
18 that's some of the confusion here.

19 MR. PULGRAM: That's -- he --

20 THE COURT: Yes, I'm looking at Exhibit 1,
21 which is Abhyanker's First Supplemental Objections in
22 Response to Plaintiff's Nextdoor First Set of
23 Interrogatories.

24 Is that the one I'm talking about?

25 MR. TARABICHI: I think so.

1 MR. PULGRAM: That's correct.

2 MR. TARABICHI: But I know we identified --
3 more than just referring to Bates number, I know we
4 actually identified the service in response to that
5 question.

6 THE COURT: Well. Oh, okay. So in 1, yes,
7 there's a narrative.

8 MR. PULGRAM: Yeah, in 1 there is.

9 THE COURT: Yes, there's a narrative.

10 MR. PULGRAM: In 10 there's not. In 5 --

11 MR. TARABICHI: In addition to referring them
12 to documents, we -- I believe there should be an actual
13 response to each one.

14 MR. PULGRAM: In 5 they say, "Abhyanker used
15 the trademark in commerce as early as August 2005," and
16 then refers to documents.

17 Rather than --

18 THE COURT: Well, refers to -- in 1, talks in
19 1, answer 1, it says, used the trademark as early as
20 2005 in connection with neighborhood map services,
21 publically distributed and marketed such maps under
22 Nextdoor trademark, and names a local group, including
23 groups -- City of Cupertino.

24 Abhyanker also used Nextdoor trademark in
25 connection with publication with various website

1 services, including eDirectree and eBid.

2 And then references to several documents with
3 Bates numbers.

4 MR. PULGRAM: Exactly. So there's a reference
5 that says only that they used it in eDirectree and eBid.
6 That's what they say in 1.

7 THE COURT: Yes.

8 MR. PULGRAM: No facts behind that, reference
9 the documents, including the one we just looked at.

10 Then if you go to the specific question --

11 THE COURT: To be fair, your question is
12 identify all public uses by you in connection with any
13 product or services prior to October 2011. So it
14 doesn't say explain the nature of each such use. You
15 could have had a --

16 MR. PULGRAM: That's in Interrogatory No. 10.

17 THE COURT: Identify all products and services
18 you have marketed and offered in connection with
19 eDirectree website.

20 MR. PULGRAM: And 11.

21 THE COURT: Identify the use, any use of the
22 term Nextdoor or any variation thereof prior to
23 February 20, 2012, including documents showing use.

24 MR. PULGRAM: So there is -- again, no
25 identification of how that use is made or any variation

1 of it; there's just -- there's just presentation of one
2 document that's not from before that date.

3 THE COURT: Well. So, for one thing, this has
4 an effect that one would want from an interrogatory.
5 You've now limited the response; they can't come back
6 and supplement this. Unless they supplement this
7 interrogatory response, this is it. This is the
8 universe of documents they're going to be stuck with.

9 And if it comes out this is the only document
10 and, come cross-examination time, this neighborhood, the
11 Nextdoor neighborhood mark, is shown to have been added
12 at a later date, you got nothing.

13 So that's the risk.

14 Now, if you want to follow this up -- this is
15 one that you could follow it up with a further
16 interrogatory, if you wanted a further explanation or
17 ask for some further --

18 MR. PULGRAM: Well, actually, we have asked for
19 one further thing with respect to this document, and I
20 think maybe we can get that completed here.

21 The printout of this document from the website
22 requires the database, the database behind a website,
23 that shows the particular link and items that are called
24 into the page.

25 We've asked for production of and received a

1 production of part of the website. But we have been --
2 we have not received the database that includes this
3 call of the NextdoorTM neighbors name.

4 And we've -- since January 7th of this year
5 been asking them to provide us with that database so
6 that we can see whether that appears and when it was
7 added to the database. And we have not yet received
8 that.

9 We've also --

10 THE COURT: You've asked for it.

11 MR. PULGRAM: We've asked for it. We've asked
12 for it again yesterday.

13 And we can have a motion to compel on it
14 tomorrow, or we can get a stipulation on the record that
15 it will be provided or a specification that it does not
16 exist; that is, that there is no proof that this
17 Nextdoor.com existed.

18 THE COURT: That's fine. I mean, you
19 should meet and confer.

20 MR. TARABICHI: Can I respond?

21 THE COURT: Yes.

22 MR. TARABICHI: He did raise it January 7th and
23 he raised it for the first time again yesterday
24 afternoon.

25 I responded by giving him exactly what he

1 wanted. I said, "I will check to see if we have it. If
2 we have it, we will produce it. If we don't, we'll say
3 we don't have it."

4 And that's exactly what he's asking for and
5 I've already agreed to that.

6 THE COURT: All right. Well, that's not before
7 me at this point. I'm disposing of issues that are
8 brought before me. And with respect to this particular
9 interrogatory, I find that there's been a sufficient
10 response. But I'm forewarning Mr. Abhyanker that he's
11 bound by those responses and that any attempt to
12 identify further documents, if not done pursuant to the
13 rules, are going to be subject to preclusion orders or
14 anything else.

15 So when you respond to an interrogatory by
16 saying, "Well, here's the documents," I read that to say
17 "Here are all the documents," not, "Here is a sampling
18 of documents."

19 MR. TARABICHI: They are all the documents in
20 our possession, custody and control. And, you know,
21 whether third parties have any, you know, we're going to
22 explore that.

23 But yes, that is everything we have.

24 MR. PULGRAM: Again -- and this begs the
25 question of what does Mr. Abhyanker know and what can he

1 say about the use. Because --

2 THE COURT: Well -- and what I've said is that
3 your interrogatory wasn't phrased with that degree of
4 specificity. And if you want to go back and ask for a
5 follow-up interrogatory, that's fine. But to say that
6 the responses are inadequate, given the phraseology that
7 was asked, that's -- I'm not going to grant that at this
8 point.

9 So the third issue has to do with this
10 agreement between Centered and Google. And it's a
11 question of whether or not Mr. Abhyanker has possession,
12 custody or control, and he claims he doesn't.

13 Is that right? Is that what it boils down to?

14 MR. PULGRAM: Yes, Your Honor. This is --
15 during this litigation, Mr. Abhyanker claims that he --
16 having been fired from Fatdoor years ago and Fatdoor
17 then having sold its assets to Google -- had himself
18 appointed interim CEO of Fatdoor and then assigned to
19 himself all of any remnant ownership that Fatdoor had
20 not transferred to Google, and that, based on having
21 assigned that to himself, he now owns it and can sue on
22 Fatdoor's rights.

23 This begs the question of what is it that is
24 left from what Fatdoor transferred to Google.

25 THE COURT: Right. And I understand that

1 that's important. Because whether trademark rights or
2 trade secret rights are --

3 MR. PULGRAM: According to paragraph 71 of
4 Mr. Abhyanker's Declaration, Google Inc. provided the
5 new Fatdoor -- him -- access to the Fatdoor.com email in
6 November of 2013.

7 If Google is providing to him as the CEO of the
8 new Fatdoor its transferee access to documents, he
9 should go to Google and he should get the document by
10 which Google received Fatdoor's assets.

11 And if Google is prepared to provide him with
12 access to email, I cannot imagine that Google will not
13 also say yes, as the owner of whatever residual rights
14 Fatdoor retained, you are entitled to a copy of the
15 document by which it retained those rights.

16 And for him to say, "I do not have possession,
17 custody or control," is not just splitting hairs, it's
18 failing to obtain a document that is going to be, again,
19 potentially outcome-dispositive in the case. Because we
20 believe that the transfer to Google will have
21 eviscerated any rights that he now claims.

22 THE COURT: So he does have possession, custody
23 or control by virtue of his relationship with Google.

24 MR. PULGRAM: By virtue of the fact that Google
25 is giving him access to things that he asked for.

1 MR. TARABICHI: He's mischaracterizing the
2 relationship with Google.

3 When Mr. Abhyanker obtained ownership of the
4 Fatdoor.com domain name again and went to set up the
5 emails, you know, Google provided him access to a
6 limited set of documents. If that agreement had been
7 one of the documents, we would have produced it.

8 By the way, they subpoenaed those documents
9 from Fatdoor and they have been produced.

10 So they have everything we have, you know.
11 He's making us try to go and get documents from a third
12 party who's not under our control. There's no way --

13 THE COURT: -- the agreement between Centered
14 and Google have been produced?

15 MR. TARABICHI: No, no, no. Whatever documents
16 Fatdoor obtained that were still residing on the server
17 were produced to Nextdoor in response to a subpoena that
18 they served on Fatdoor.

19 We don't have the document. If we had it, we'd
20 produce it. It's obviously a relevant document. But
21 Google's not under Mr. Abhyanker's control. You know,
22 they don't need to do what he says.

23 THE COURT: Well, let me say this. The fact
24 that Google has been cooperative and provided access to
25 some documents does not necessarily prove that somebody

1 has possession, custody or control. You have to have
2 the right to obtain -- or, at the very least, the
3 practical right to obtain those documents.

4 And it's some indication that he has some
5 access or some working relationship, but I don't know
6 that that proves that he has the kind of control or
7 practical access that would open the door to, for
8 instance, this agreement.

9 What I'd like to know is what efforts did
10 Mr. Abhyanker make to obtain.

11 MR. TARABICHI: He went through all the
12 documents in his possession, custody and control, and
13 our position -- you know, I think he's mischaracterizing
14 the relationship with Google into something more than it
15 is.

16 THE COURT: No, I'm short-circuiting it. You
17 didn't answer my question.

18 What efforts did he make with Google?

19 MR. TARABICHI: He did not make any efforts.

20 THE COURT: That's what he should do. We can
21 obviate this whole thing. He obviously had some success
22 in getting access to Fatdoor.com email. He may or may
23 not have success getting it.

24 And I would submit that he probably will have
25 pretty good success because if Google doesn't cooperate,

1 the next thing that's going to happen is a subpoena.

2 MR. TARABICHI: I can talk to --

3 MR. RAWLINSON: The other question, Your Honor,
4 I don't understand this discussion. How can he have any
5 understanding of the basis for the rights and the scope
6 of the rights that he's claiming to have if he's never
7 seen the agreement that describes --

8 THE COURT: He said he never saw it or doesn't
9 have it now?

10 MR. RAWLINSON: I don't know.

11 MR. TARABICHI: Well, that's an agreement
12 between Centered and Google. The agreement.

13 THE COURT: But he got the residuary. So he
14 must know the residuary of what --

15 MR. TARABICHI: I don't know if he's seen it or
16 not. I don't know.

17 THE COURT: Well, that's probably pretty
18 astounding, if he's never seen it.

19 He's assigned himself the residuary rights but
20 not even knowing what the primary rights that were
21 assigned away? That's not a very good business deal.

22 MS. NORTON: We're not saying he hasn't. I
23 think the issue before the Court is whether or not he
24 has that document currently, which he does not. And we
25 understand from Your Honor that you request that he --

1 THE COURT: But it's does strain plausibility
2 that he wouldn't have retained that. Since he got a
3 residuary right, you would think, as a businessman, a
4 sophisticated businessman who came up allegedly with
5 this idea, he'd have the sense to keep the document that
6 gave away A so he has B.

7 He has to know what A is in order to know what
8 B is.

9 So I'm going to direct that you direct your
10 client to make the inquiry, use diligent efforts to
11 obtain this agreement. We shouldn't be wasting your
12 time or my time over something like this. It's
13 obviously a very relevant document. He should make
14 every effort to get it.

15 If he doesn't get it, then we'll decide are we
16 going to have to grant the motion to compel or something
17 or you can subpoena or something. But the very first
18 step is he should use reasonable diligence to obtain
19 this document from Google.

20 MR. TARABICHI: I will tell him to do so. And
21 I just want to advise the Court, though, that he's out
22 of town until Wednesday.

23 THE COURT: All right. Well, as soon as he
24 gets back, he should do so.

25 All right. That's the letter, as far as I

1 know.

2 MR. PULGRAM: The opposition to the motion for
3 summary judgment talked about a new, never-previously
4 disclosed idea of how information might have been
5 disclosed to Benchmark.

6 It talked about the Bucks breakfast. I don't
7 know if you recall that from your review of the paper,
8 Your Honor.

9 And I don't want to get deep into here, except
10 to say suddenly there's now a new explanation for how
11 Benchmark might have learned about bids that never
12 before was in the case.

13 THE COURT: That's the function of
14 interrogatories; that's the function of depositions.

15 MR. PULGRAM: Here's my concern, Your Honor.
16 We asked that interrogatory and we were told expressly
17 that Mr. Abhyanker -- and here's -- here's the quote:
18 Mr. Abhyanker is unable to recall the particular details
19 of the negotiation offer made over the phone many years
20 ago. While we understand and acknowledge that you would
21 like the details, Mr. Abhyanker does not remember them.

22 That's what his counsel said after he didn't
23 disclose bids in his interrogatories. And now there
24 were new bids that were identified in his declaration.

25 I think, related to this -- and here's my real

1 point on this particular point, I'm not -- this is not
2 intended as a side show. Your Honor ordered
3 Mr. Abhyanker, as part of the whole trade secret
4 process, to comply with the protocol that we stipulated
5 to and you ordered that he specify whether the trade
6 secret was acquired by each particular
7 counter-defendant, and the supporting factual basis, and
8 then whether the trade secret was disclosed by each
9 particular counter-defendant.

10 So he came up in his declaration now with a new
11 supposed disclosure that had never been previously
12 included and that is that there was a breakfast at Bucks
13 in Woodside that after he met with someone he happened
14 to bump into a guy from Benchmark.

15 And there's an email that reflects that they
16 talked for, quote, a few minutes, and that they talked
17 about a subject that's not in this litigation, his
18 business called Trademarkia. But in his declaration he
19 says we also entered into a new confidentiality
20 agreement and I started talking to him about
21 Nextdoor.com and that I told him the bidding history of
22 Nextdoor.com.

23 Now, the reason that I raised this is I don't
24 want this case to expand into new theoretical
25 disclosures or trade secrets that weren't disclosed when

1 Your Honor ordered them to describe the supporting
2 basis.

3 This is a 2010 conversation. The email doesn't
4 refer to Nextdoor; it doesn't refer to confidentiality;
5 it doesn't refer to bids. But there's an email that
6 shows he talked with Benchmark in December of 2010.
7 He's known all along we bought the website domain.

8 THE COURT: What are you asking for?

9 MR. PULGRAM: I'm asking that we lock down and
10 hold at the designation and disclosure of trade secrets
11 and we do not expand them by virtue of his declaration
12 or by virtue of his opposition or by any other activity
13 in the case, given --

14 THE COURT: Well, answers to interrogatories,
15 to the extent I'll have to look at exactly what I
16 ordered, but if what I ordered is a disclosure of X, Y
17 and Z, which I'm going to treat as if it were a
18 responsive interrogatory, there's a purpose for
19 discovery and --

20 MR. PULGRAM: And that's all we needed. This
21 will be obviated if you end up finding that there's no
22 trade secret anyway.

23 THE COURT: All I can say is that to the extent
24 that you believe that now evidence is being used, either
25 here or at trial, that exceeds or is different from that

1 previously disclosed which they are obligated to
2 disclose, either by virtue of the order of this Court or
3 by the rules regarding the discovery covered by the
4 Federal Rules of Civil Procedure and there was no
5 supplementation, that's the risk.

6 Which is why I brought up when you cite
7 documents -- for instance, saying, "This is the total
8 universe of documents to support an answer to this
9 particular request or interrogatory," that's it.
10 Nobody, on either side, is going to be allowed to expand
11 that, unless there's good cause or something that's
12 going to excuse that. So that's all I'm saying. I'm
13 not going to comment on anything specific.

14 MR. PULGRAM: That's fine, Your Honor. I did
15 not want us to, sub silencio, change the pleadings or
16 the identification of trade secrets here.

17 THE COURT: All right. I need to end this
18 soon.

19 But you had a comment on the motion to dismiss?

20 MR. RAWLINSON: Yeah, Your Honor.

21 THE COURT: Oh, we are going to have to take a
22 break because the reporter wants a break at this point.
23 We've been going at it for -- I've been here for two
24 hours almost. We'll take a short break.

25 (Recess from 3:22 P.M. to 3:28 P.M.)

1 THE COURT: Okay. Something you want to say
2 about the motion to dismiss?

3 MR. RAWLINSON: Yes, Your Honor. I'll be
4 brief. I know you've been patient already.

5 So the only use I'd raise beyond what's been
6 raised on the public disclosure issue is on the
7 reasonable basis, and specifically as to Benchmark and
8 specifically on the pleadings.

9 So let me just start to refresh. It's a
10 hundred-page Complaint. There's no allegation in the
11 Complaint with respect to Benchmark that we received
12 either of the two trade secrets that are now the focus
13 of the action.

14 To be clear with the Court, there is one
15 sentence in the trade secret specification that came
16 later, but, in the Complaint itself, there is no
17 allegation that we received either the bidding history
18 or the Lorelei neighborhood information.

19 And I can -- you'll look, in vain, for the
20 reference. And if you actually look at paragraphs 123
21 and 124 of the Complaint, you'll see a discussion of a
22 meeting with Harvey at Benchmark in 123, and then, 124,
23 a long list of trade secrets that were allegedly
24 disclosed to Benchmark later.

25 And you'll see nowhere on that list are either

1 of the two that are now identified.

2 Now, I say that, as just way of background, to
3 talk about the reasonable basis for confidentiality.

4 There's also -- because neither of those is
5 alleged to have been given to Benchmark in the
6 Complaint, there's no allegation that they were
7 identified as confidential, there is no allegation that
8 anyone attempted to segregate them from the other
9 material that was public and this Court has held was
10 public, there's no allegation that when -- and let me
11 just pause there and say and then the only basis, the
12 only basis for any allegation of duty to hold as
13 confidential is this oral agreement that was allegedly
14 reached with Benchmark.

15 And I'd say that under the circumstances -- let
16 me start, before we get to the statute of frauds'
17 issue -- that under the circumstances where the material
18 is not called out as confidential, there's no
19 allegation, when there's no allegation that any steps
20 were made to segregate it from public material, when
21 there's, by description in the Complaint, two different
22 companies are apparently represented; right? Obviously,
23 originally the story was that Fatdoor was being pitched
24 to Benchmark, but this other entity, the Abhyanker
25 entity, also offered his trade secrets. No attempt to

1 segregate between those or identify which are which.

2 And then, with all due respect to the
3 discussion we've had about public disclosure, when we're
4 talking about two trade secrets that are not, on
5 their -- alleged trade secrets that are not, on their
6 face, obviously confidential -- in other words, I've
7 already launched in Lorelei and I think it's a good
8 neighborhood to launch, in number one, and, number two,
9 I put a bid in on a name that I didn't get and, by the
10 way, as Your Honor has held, a public domain name.

11 All that is a background. And we're dealing
12 with an attorney. No allegation of any steps to
13 identify the material as confidential, market it as
14 confidential, segregate it from the public material.

15 The only basis for any duty to obtain as
16 confidential is this alleged oral agreement. And the
17 alleged oral agreement is not specific with respect to
18 this material at all. And the description of this
19 agreement is in paragraph 120 of the Complaint.

20 And the alleged agreement is, "In a follow-up
21 telephone call, Harvey, a general partner of Benchmark
22 Capital, agreed to maintain confidential any and all
23 information disclosed by Abhyanker during any future
24 meetings."

25 So it's everything we give you with no attempt

1 to say only the confidential material or to segregate it
2 with respect to these materials, and for all time, all
3 future meetings.

4 And that gets to the final point, Your Honor,
5 which is this alleged agreement would be clearly invalid
6 under the statute of frauds. And, in fact, this was
7 originally brought as a contract claim.

8 And as you may recall, Plaintiff filed a
9 motion -- or filed a Complaint. We filed a motion to
10 dismiss, a new Complaint was submitted before Your Honor
11 was presented with those motions, the contract claim was
12 withdrawn and the trade secret claim was left as the
13 only claim against Benchmark.

14 So, in effect, what happened is you had an
15 invalid contract claim that simply has had the trade
16 secret label draped over it.

17 And what I'd say here, Your Honor, is I don't
18 think the Court has to decide whether an oral agreement
19 could ever be a basis for a trade secret claim. But I
20 think, based on the allegations in the Complaint,
21 there's simply no basis on which to hold that there were
22 reasonable steps taken with respect to the material
23 that's now alleged to be the trade secret.

24 Again, in 124 there's a whole list of stuff:
25 Algorithms; product details; business plans; security

1 algorithms; data base structures. But no reference to
2 these particular trade secrets.

3 The only reference in the Complaint to the
4 bidding history has to do with 2010 and Mr. Sood.

5 And I understand that the plaintiff could just
6 replead, and, given our history in this case, I'm sure
7 he would allege some -- some sort of specifics.

8 But we're not at the beginning of the case.
9 This is, if you count the state court Complaint, the
10 fifth time that we've been faced with a Complaint. And
11 if you count the trade secret designation, which has
12 been updated two or three times where it's seven or
13 eight tries, and in none of those is there any
14 allegation that this material was called out as
15 confidential, that this material was marked as
16 confidential, this particular material, and, in fact,
17 it's not until the trade secret designation that you get
18 any allegation that came to Benchmark, and that
19 allegation is a single sentence, Your Honor.

20 THE COURT: What is the allegation? That the
21 trade secret --

22 MR. PULGRAM: Let me just read it to you, Your
23 Honor.

24 This is in response to Your Honor's order to
25 have a trade secret designation. And it is the second

1 amended trade secret designation.

2 And it says, "Mr. Abhyanker alleges that the
3 bidding history and identification of the Lorelei
4 neighborhood were acquired by the counter-defendant
5 Benchmark entities. The factual basis for this
6 allegation is that Abhyanker confidentially disclosed
7 the bidding history and identification of the Lorelei
8 neighborhood to Benchmark during a meeting in June of
9 2007."

10 And that's the sum total.

11 And that's the other thing that I would say
12 generally, Your Honor, is although this is a long and
13 detailed Complaint, with respect to my clients and with
14 respect to the allegations of trade secrets that are
15 currently at issue, it is absolutely bare bones.

16 And, in fact, in the Complaint itself there's
17 no allegation that either of these was communicated to
18 us.

19 And that, what I gave you there, is the sum
20 total of the factual allegation that was communicated to
21 us in the trade secret designation.

22 And that entire basis for the duty of
23 confidentiality is the language I read you from 120,
24 which is a general, "We'll keep it all confidential, and
25 we'll keep it, in all future meetings, confidential."

1 Which I would say would clearly violate the statute of
2 frauds, and it does not constitute --

3 THE COURT: Does the statute of frauds apply to
4 something that cannot possibly be performed within one
5 year?

6 MR. RAWLINSON: The statute of frauds
7 generally only applies when something can't be done
8 within a year.

9 And here, when you talk about an opened-ended
10 agreement that counts to all future meetings -- for
11 instance, to go back to the conversation you just had,
12 they now have alleged in a separate summary judgment
13 that there's a 2010 meeting with Benchmark.

14 THE COURT: Well, I know, as things have
15 transpired, it took some time, but how do you know that
16 this is something that could not possibly be performed
17 within one year?

18 MR. RAWLINSON: Well, it's a duty to keep it
19 confidential forever; right? And, again, go to 124,
20 Your Honor, of the Complaint, and look at the list of
21 material that's included there; right?

22 And it is not just any one thing, it is an
23 entire list of algorithms, business plans, blah, blah,
24 blah, blah, blah.

25 I suppose anything is possible, but there's no

1 reason to think that all of that material would be made
2 public in one year, alleviating us of our
3 responsibility.

4 THE COURT: Well, likely is not the question;
5 whether it's possible. That's a pretty tough standard.

6 MR. RAWLINSON: Plausible, I'd respectfully
7 suggest, Your Honor.

8 THE COURT: Well --

9 MR. RAWLINSON: And I won't belabor --

10 THE COURT: But possible is *White Lighting v.*
11 *Woolson*, California Supreme Court in 1968. In relying
12 on Section 1624a,(1), says, by their terms, cannot
13 possibly -- not likely, possibly -- be performed within
14 one year.

15 Pretty tough standard to meet.

16 MR. RAWLINSON: Maintain all information
17 disclosed by Abhyanker during any future meetings.

18 MS. NORTON: Your Honor, if I may. Counsel has
19 raised quite a few points here that I would like to
20 address.

21 But just to briefly address the point that
22 we're currently discussing, there is some cases in
23 Mr. Abhyanker's opposition brief addressing this point
24 and cases in which the Ninth Circuit said even if it
25 appears very unlikely that the agreement could be

1 performed in one year, theoretically, one of the
2 companies could have gone bust, anything could have
3 happened.

4 And so it's -- you know, as long as it's
5 possible, even if it's unlikely.

6 And here, for example, if -- there's a number
7 of scenarios. If Mr. Abhyanker had, in fact,
8 successfully bid on the Nextdoor domain name and
9 obtained it and formed a partnership with Benchmark,
10 there are things that could have happened that would
11 have meant that some of the information provided would
12 no longer have the economic value by virtue of being
13 secret.

14 And that's just one way in which the statute of
15 frauds doesn't apply here. But it also doesn't apply
16 due to estoppel.

17 And I'd like to draw Your Honor's attention to
18 a case that they raised in their reply brief in which
19 they said that estoppel doesn't apply, just because one
20 party doesn't perform their agreement, but it also needs
21 some other circumstance. And that was the *SOAP* case.

22 In that case, the party who was trying to have
23 the agreement be enforced said that not only did the
24 opposing party not perform their side of the agreement,
25 but they also misappropriated trade secrets. And the

1 Court said that that allegation, combined with the
2 nonperformance, was enough to survive a motion to
3 dismiss.

4 And that's exactly the case that we have here.
5 That the allegation is that Benchmark made a promise.

6 And we did provide some articles indicating
7 that it is venture capital's normal practice to provide
8 oral assurances and, in keeping with their normal
9 practice, they provided oral assurance, and in reliance
10 on that assurance, Mr. Abhyanker provided his
11 confidential information which the operative pleading
12 states includes his trade secrets, and, in reliance on
13 their promise, he provided this to Benchmark and then
14 Benchmark failed to perform their side of the agreement
15 and misappropriated the trade secret. That's the
16 allegation.

17 And based on prevailing case law, that's enough
18 to survive a motion to dismiss based on the statute of
19 frauds.

20 And given that counsel raised a number of
21 points, I'd like to just briefly say that counsel is
22 overly complicating things here by saying -- by trying
23 to draw distinctions between public and private
24 information that was provided and trying to draw
25 distinctions between different companies that appeared

1 before Benchmark.

2 And it's really a very simple story. That
3 there was a neighborhood social network that
4 Mr. Abhyanker and Fatdoor were developing that
5 incorporated some of Mr. Abhyanker's personal
6 intellectual property, as well as Fatdoor's
7 intellectual property, they pitched this idea to
8 Benchmark, Benchmark ultimately couldn't meet the terms
9 of another venture capital firm that provided a higher
10 valuation, and when Benchmark -- when a company that
11 Benchmark had funded needed to quickly turn themselves
12 around and needed a new -- a new idea, new concept, they
13 misappropriated the trade secrets.

14 So there's no need to split hairs between what
15 was public and what was private. Trade secrets can be a
16 compilation of information. So whether --

17 THE COURT: What about the failure to allege
18 with specificity the trade secrets now asserted in
19 paragraph 124? It's not in here.

20 MS. NORTON: I think that Benchmark knows very
21 well the trade secret that we are talking about. We
22 have provided the trade secret designation, which
23 identifies the trade secrets.

24 They -- I don't think they can honestly allege
25 that they don't know what the allegations are.

1 They understand that the allegations are that
2 Mr. Abhyanker provided them with a confidential CD which
3 included his trade secret information, and between that
4 CD and follow-up conversations Mr. Abhyanker provided
5 Benchmark with his trade secrets that are at issue here
6 which were then misappropriated.

7 MR. RAWLINSON: Let me just address a couple of
8 those, Your Honor.

9 First of all, the CD does not, by any
10 allegation -- well, first, I'm confined to the
11 Complaint. There's no allegation that -- and the
12 concept, the simple concept that counsel talks about is
13 not what is at issue here. The trade secrets at issue
14 in this case are two items; not some generalized concept
15 of a neighborhood social network. That's been disposed
16 of.

17 So with respect to those two issues, let's
18 start with the plain fact; there's no allegation
19 anywhere in the Complaint that either of those was
20 transmitted to us. Second, my argument here -- and I
21 don't want to get sidetracked on the statute of frauds,
22 I think the policies behind the statute of frauds go
23 with the reasonable basis to keep material confidential.

24 And my argument to Your Honor is when you make
25 no allegation that you segregated this material, that

1 you called it out as confidential -- and I don't think
2 either of these pieces of information are on any disk;
3 all right? Although it's certainly not alleged in the
4 Complaint they're on a disk, and the disk is sort of a
5 stalking horse for other material that is no longer at
6 issue, because what's in 124 has apparently been
7 abandoned and replaced by these two specific items.

8 So no allegation that they were segregated, no
9 allegation that they were identified, no allegation that
10 they were given to us. And the only reason I raised the
11 statute of frauds at all, Your Honor, is because it's
12 instructive about whether this sort of general statement
13 about a general obligation to keep everything
14 confidential forever and in any future meetings
15 satisfies the reasonable steps and whether there's been
16 any allegations in the Complaint that would satisfy
17 that.

18 I understand that the plaintiff can, you know,
19 after eight or nine tries try again, but I really,
20 before we're about to launch off -- unless Your Honor
21 changes his perspective on a long fight with a lot of
22 depositions and a lot of money about what one trade
23 secret in this ideal neighborhood, I don't even
24 understand, necessarily, what the economic value of that
25 would be.

1 I'll put all that aside.

2 But right now, with respect to whether there's
3 any allegation from which you could say our folks -- you
4 know, that there was a reasonable basis that these were
5 confidential to us in the Complaint or even in the trade
6 secret specification, I don't think you can say that,
7 Your Honor.

8 THE COURT: Where in this Complaint is it
9 alleged that the two trade secrets that are now at issue
10 were conferred or conveyed or transferred to Benchmark?

11 MS. NORTON: The Complaint alleges that
12 Mr. Abhyanker provided his trade secrets, and it
13 includes quite a bit of information, and then the
14 follow-up trade secret designation identifies them with
15 further specificity.

16 THE COURT: Well. Okay. So you're saying the
17 fact that he described them generally and provided a
18 non-exhaustive list of the trade secret in paragraph 124
19 does not preclude a further specification ultimately in
20 the trade secret disclosure filing, which finally
21 identifies these two trade secrets. They are
22 encompassed in 124, even though not directly
23 articulated.

24 MS. NORTON: That's right.

25 THE COURT: I mean, if this were a -- if we

1 were just dealing with a straight kickball *Tuolumne*
2 issue, that might be the case. On the other hand, what
3 are we going to accomplish? They get another chance to
4 amend.

5 It's very hard to argue prejudice under Rule
6 15(a), given the fact that they've already disclosed
7 what the trade secret is and narrowed it to two
8 different things and made a specific allegation.

9 So why go through the exercise of granting the
10 motion to dismiss with leave to amend, having them come
11 back and amend, and we throw another 60 days into the
12 process?

13 MR. RAWLINSON: If that's Your Honor's
14 perspective, I can't tell you a good reason. I think
15 there has to come a time when this thing is nailed down
16 and we know what we're shooting at.

17 With all due respect, Your Honor, I cannot
18 imagine we're about to launch a federal case off on the
19 ideal neighborhood versus maybe a good neighborhood
20 versus the launch neighborhood.

21 If you look at the allegations, they're going
22 to subpoena twenty people who are the CEO of FaceBook,
23 the founder of LinkedIn. I can't imagine what the value
24 of this last alleged trade secret is. And all I'm
25 saying, Your Honor, is -- I haven't even pushed you on

1 my plausibility issue. Because I think there's a huge
2 plausibility issue; right?

3 When we come back to the very beginning, he was
4 here -- the allegations in the Complaint, "Are I was
5 pitching FaceBook -- or Fatdoor." Right? Which in this
6 Complaint he says is not what's at issue. He says, "I
7 don't own Fatdoor; that's nobody else's. And I then
8 gave that whole list of trade secrets in 124 to
9 Benchmark, even though that wasn't the company that I
10 was pitching." But he leaves out the two trade secrets
11 that we're now fighting about.

12 I think there is a fundamental -- you know, the
13 Court is not required to give them ten chances to put
14 together a coherent story, and they still haven't.
15 Right? We're now a year -- more than a year in and we
16 still haven't got a coherent story.

17 When we said why would you give up these trade
18 secrets for a different product or a different company,
19 they said for security and privacy. And then, when we
20 got narrowed down to these two, they said, "Hey, they
21 don't have anything to do with security and privacy."
22 And then the story changed again.

23 I'm worried and I know my co-counsel are
24 worried this is just going to keep changing forever.

25 So you're right, Your Honor. If they just keep

1 getting a bite at the apple, there's no point. But we
2 think they've had a lot of bites.

3 THE COURT: All right. Give you a last
4 comment.

5 MS. NORTON: I disagree with counsel's
6 characterization that any story is continuing to change.
7 I think that the issues between the Court are very
8 clearcut. There's two trade secrets at issue.

9 THE COURT: Yes, but how do we get here? It
10 certainly is not indicated from your initial filings and
11 it certainly has shifted.

12 MR. TARABICHI: Your Honor, I don't have a copy
13 our pleading in front me.

14 MR. PULGRAM: I got it right here.

15 MR. TARABICHI: Okay. Could I take a quick
16 look at this?

17 THE COURT: Yes. You're looking at 124 of your
18 second amended counterclaim?

19 MS. NORTON: Your Honor, while he looks, I just
20 wanted to address counsel's point.

21 And, again, I believe that he's just overly
22 complicating things by stating this issue of security
23 and privacy and the story's changing.

24 And I understand that the Complaint has been
25 amended several times, but my point is that there are

1 two trade secrets that are currently in front of the
2 Court and Mr. Abhyanker has provided a coherent story as
3 to motive from Benchmark for misappropriating those
4 trade secrets. And if counsel disagrees with that,
5 that's a matter of discovery and that's a matter to be
6 determined as the case goes forward.

7 MR. TARABICHI: Your Honor, I direct you to
8 page 100, where we define trade secrets. And if you
9 look at line -- between line 18 and 19, you'll see
10 bidding history of the Nextdoor domain name and then the
11 Lorelei neighborhood as the next sentence. And that's
12 all part of our definition of trade secrets.

13 MR. RAWLINSON: But if you, Your Honor,
14 actually look at the allegations in the Complaint and
15 look for bidding history, you'll see, at 132, 151 and
16 152, there's a discussion that they were transmitted to
17 Sood. No discussion that they were transferred to
18 Benchmark.

19 You can see in 123 and 124 the description of
20 what was given to Benchmark. There's also no specific
21 allegation in the Complaint that the Lorelei
22 neighborhood was ever communicated to Benchmark.

23 THE COURT: Well, 154, if you're going to mince
24 words, says Abhyanker disclosed key details of the Trade
25 Secrets -- capital T, capital S -- which arguably

1 relates back to what was earlier defined. I don't know
2 if it's defined formally in here, whether 100 actually
3 uses the term capital T capital S.

4 But it says, including but not limited to.

5 So it is broad enough to encompass, but it's --
6 but if -- again, if we were here and not already at the
7 point we've had trade secret disclosures or second
8 amended trade secret disclosures, I would have serious
9 problems with this. But I'm not going to -- we are
10 where we are at this point.

11 So I'm going to -- I'll indicate now that I'm
12 going to deny the motion to dismiss, at least on those
13 grounds, but I'm leaving open and going to take under
14 submission the matters that I had already indicated.

15 MR. RAWLINSON: Thank you for your patience,
16 Your Honor. I know it was a long afternoon.

17 THE COURT: Thank you.

18 With respect to any case management issues, let
19 me just see here whether there was anything that we need
20 to cover.

21 Well, I've dealt with the discovery issue
22 that's referred to in here, and I've got the motions
23 that we're dealing with.

24 We do have dates coming up. Close of
25 non-expert discovery in June; correct?

1 Is that right?

2 MR. TARABICHI: Your Honor, I don't have the
3 schedule in front of me but I know one issue is
4 discovery on the trade secret claim is stayed, so when
5 we're talking about that cut off, I don't know if we're
6 talking about for all claims or just the non-trade
7 secret claims because --

8 THE COURT: This is general cut off because --

9 MR. TARABICHI: That's an issue I wanted to
10 highlight for you. Because discovery hasn't been
11 allowed to begin on the trade secret claims yet.

12 THE COURT: Well, and depending on what I do
13 with respect to this motion, there may not be discovery,
14 and so I will address that in my order.

15 If there still is a trade secret claim left,
16 I'm going to open it up to discovery on whatever claim
17 is left; and, if there's not, I'm not.

18 And I will also forewarn the parties that I
19 take seriously the proportionality principles of Rule
20 26(b), and so when I say discovery's opened up, it's
21 going to have to be coherent and precise; I don't want
22 shotgun-type discovery that's -- that does nothing but
23 burden one side or another.

24 And I do expect that you meet and confer and
25 work out matters and not argue over fine points when

1 there is obvious answers to all of this stuff.

2 And this letter, I will say, is an example of
3 that. This could have been resolved with reasonable
4 people on each side and not have to bring every little
5 thing to me.

6 MR. PULGRAM: That's our hope, Your Honor.

7 THE COURT: All right.

8 Let me ask. I take it -- I know you've had ADR
9 with Magistrate Judge Vadas? Is that right?

10 THE CLERK: Vadas.

11 MR. PULGRAM: Yes.

12 THE COURT: Is there any point, given if we
13 open up some discovery or do further discovery or reach
14 another stage here, where it would be useful or fruitful
15 to regenerate any ADR process?

16 MR. PULGRAM: Well, that -- that effort was not
17 productive, and I'm not sure that there's anything at
18 this point that will be.

19 THE COURT: All right.

20 Do you concur?

21 MR. TARABICHI: I pretty much concur with that
22 characterization.

23 THE COURT: All right. We'll revisit that next
24 time we get together.

25 Let's -- after discovery's closed, let's have a

1 further status conference at the end of June maybe.

2 THE CLERK: June 26 at 10:30.

3 MR. PULGRAM: One moment.

4 THE COURT: All right. We'll see you on
5 June 26 at 10:30.

6 MR. PULGRAM: Thank you for your time, Your
7 Honor.

8 MR. TARABICHI: Thank you.

9 (Proceedings adjourned at 3:53 P.M.)
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

A handwritten signature in cursive script, reading "Kelly Lee Polvi".

Kelly Lee Polvi, CSR No. 6389, RMR, FCRR

Tuesday, March 4, 2014